

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

Part A—Commentary

2.9 Affidavits Based upon Hearsay Information

A. Informant Must Speak with Personal Knowledge

Insert the following text before subsection (B) on page 20:

A tip received by Crime Stoppers and forwarded to law enforcement must adhere to standard requirements for search warrants based on multiple hearsay. *People v Keller*, ___ Mich App ___, ___ (2006). Where police officers were unable to establish that the Crime Stoppers tip was based on an informant’s personal knowledge, the officers were required to establish the credibility of the unnamed informant and the reliability of the informant’s information in order to adequately support an inference of probable cause from which a warrant could be issued. In *Keller*, the affidavit was insufficient to establish probable cause and a search warrant should not have been issued because the officers were unable to establish the anonymous informant’s credibility, and information gathered from surveillance and a trash pull did not show that the information from the tipster was reliable. *Keller, supra* at ___.

B. Informant Must Be Credible or Information Must Be Reliable

Insert the following text on page 21 before the paragraph beginning with “Even where a search warrant issued from ...”:

A tip received by Crime Stoppers and forwarded to law enforcement must adhere to the standard requirements for search warrants based on information from an unnamed informant. *People v Keller*, ___ Mich App ___, ___ (2006). Where police were unable to establish the anonymous informant’s credibility and where information gathered from surveillance and a trash pull did not show that the information from the tipster was reliable, the affidavit was insufficient to establish probable cause and a search warrant should not have been issued. *Keller, supra* at ___.

Part A—Commentary

2.13 The Exclusionary Rule and Good Faith Exception

Insert the following text before the partial paragraph at the bottom of page 29:

In *People v Keller*, ___ Mich App ___, ___ (2006), the Court of Appeals found that the affidavit on which the search warrant was based could not justify a reasonably cautious person’s conclusion that there existed a fair probability that evidence of drug trafficking would be present at the defendants’ house.

The warrant issued from an affidavit that referenced two factors: (1) receipt of an anonymous tip without other supporting or descriptive information, and (2) recovery of a marijuana roach and possible marijuana residue from a trash pull at the defendants’ house. The *Keller* Court concluded that the affidavit failed to provide a substantial basis from which probable cause could be inferred and that the magistrate who authorized the warrant based on the inadequate affidavit had completely abandoned his or her judicial role. In addition, the Court pointed out that the affidavit itself was misleading: “the affiant indicated that she had directly received the anonymous tip when, in fact, Crime Stoppers received the tip and then conveyed it to the police.” *Keller, supra* at ___.

Because the warrant’s supporting affidavit could not support an officer’s reasonable and good faith reliance on the warrant’s validity and because the magistrate who approved the warrant failed to exercise his or her proper judicial role, the good-faith exception did not apply to evidence seized during the warrant’s execution. *Keller, supra* at ___.